

Montana Water Court
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IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

CLAIMANTS: Cora R. Rall; David A. Rall

CASE 41H-0255-R-2023
41H 139054-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Claim 41H 139054-00 is a groundwater domestic use claim.
2. The claim appeared in the Preliminary Decree for the Gallatin River (Basin 41H) and was decreed with the following issue remarks:

EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

A LATE OBJECTION HAS BEEN FILED TO ALL ELEMENTS OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

3. On May 15, 1989 Paul and B. Kathryn Jordan filed a Notice of Clerical Error to Amend the place of use from NWSWSW Sec. 8 to E2SE Sec. 8. However, no maps or additional evidence were included in the filing. The Jordans' ownership of claim 41H 139054-00 ended in 2001.
4. In a March 29, 2003 order, a deadline was set for Claimants Cora and David Rall to file historical evidence supporting the place of use amendment and clarifying the reservoir. The order stated that if nothing was filed by May 30, 2023, the Court would conclude that the Claimants did not wish to pursue the amendment and the claim will remain as-is. Nothing was filed by the deadline. The issue remarks should be removed from the claim and the claim should remain as-is.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA.

3. The requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

4. The requested amendments to the place of use do not overcome the prima facie status of the claim. The issue remarks should be removed from the claim.

5. If a claimant, objector, or intervenor fails to comply with an order issued by the water court, the water court may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding. Rule 22, W.R.Adj.R. No one responded to the court's order setting filing deadline. The late objection to claim 41H 139054-00 should be dismissed and the claim should remain as-is.

RECOMMENDATIONS

1. The issue remarks should be removed from claim 41H 139054-00.
2. The late-objection to claim 41H 139054-00 should be dismissed.

A Post Decree Abstracts of Water Right Claims is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

David A. Rall
Cora R. Rall
PO Box 205
Mesquite, NV 89024-0205

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 139054-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: CORA R RALL
PO BOX 205
MESQUITE, NV 89024 0205

DAVID A RALL
PO BOX 205
MESQUITE, NV 89024 0205

Priority Date: DECEMBER 31, 1912

Type of Historical Right: USE

Purpose (use): DOMESTIC

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: 4.60 AC-FT

Households: 2

Maximum Acres: 1.50

Source Name: SPRING

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SW	9	1S	6E	GALLATIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: PIPELINE

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

Reservoir: ONSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	SW	9	1S	6E	GALLATIN

Diversion to Reservoir: DIVERSION # 1

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.50		NWSWSW	8	1S	6E	GALLATIN

Total: 1.50